

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

Jimmie L. Washington,	:	Case No. 1:12-cv-628
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
C/O John McCoy,	:	
	:	
Defendant.	:	

**ORDER**

Plaintiff, Jimmie L. Washington, is an inmate at the Southern Ohio Correctional Facility. He filed a pro se complaint under 42 U.S.C. § 1983 against Correctional Officer John McCoy, alleging that McCoy used excessive force against him. Washington filed a series of subsequent motions, and the Magistrate Judge has issued a Report and Recommendation concerning a number of those motions. (Doc. 23) In her Report, the Magistrate Judge (1) granted Plaintiff's motion for service of process on Officer McCoy (Doc. 18); (2) denied Plaintiff's motion to stay (Doc. 8) as moot; (3) granted Plaintiff's motion to amend his complaint, as set forth in Doc. 14, and ordered service of process by the United States Marshall on Officer McCoy; (4) denied Plaintiff's motion to compel (Doc. 15); and (5) denied Plaintiff's motion to schedule alternative dispute resolution (Doc. 19). The Magistrate Judge also recommended that this Court deny Plaintiff's motions for default judgment (Docs. 11, 17, 20 and 22), as well as his motions for injunctive relief (Docs. 9, 21).

Washington has filed objections to the Report (Doc. 25), contending that the Magistrate Judge erred in recommending that his motion for default judgment should be

denied. He argues that, on his own initiative, he personally served Officer McCoy at the prison (McCoy's place of employment) by handing him "court papers." After this incident, Washington alleges that McCoy attempted to retaliate against him by filing a false conduct report (the subject of Washington's amended complaint). Washington contends that he validly served Officer McCoy when he handed him what McCoy described in that conduct report as "two pieces of paper" that were "court papers." (See Doc. 13) This is plainly insufficient to satisfy the requirements of valid service of process of the complaint under Fed. R. Civ. Proc. 4(c), which requires that a summons issued by the Clerk of Court along with the complaint must be served on the individual. There is no admissible evidence in the record that McCoy was served with a valid summons and Washington's complaint.

The Magistrate Judge correctly concluded that a default judgment against McCoy at this juncture would be improper. Moreover, Washington will not be unduly prejudiced as he suggests; the Magistrate Judge has ordered the U.S. Marshall to serve McCoy with the amended complaint, and thereby foster the goal of resolving disputes on their merits. For these reasons, the Court overrules Plaintiff's objection to the Magistrate Judge's Report, and adopts that Report in full.

SO ORDERED.

DATED: May 16, 2013

s/Sandra S. Beckwith  
Sandra S. Beckwith, Senior Judge  
United States District Court